IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8981 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IKBAL AHMADBHAI SALEH (SHEIKH)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8981 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Subhadra Patel for the petitioner detenu and ld. AGP Ms. HB Punani. Affidavit-in reply on behalf of Commissioner of Police,

Surat City, tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 29.05.2004 passed by the Police Commissioner, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in solitary single offence punishable under Sections 66B, 65AE, 81 of the Bombay Prohibition Act being Sachin Police Station III CR No. 227/2004 registered on 01.04.2004. It is recorded by the authority that the petitioner is a "boot-legger" and is involved in the activities dangerous to the society. While recording subjective satisfaction, the detaining authority has considered two aspects viz. (i) the detenu is involved in aforesaid crime registered against him and, (ii) and statements of witnesses recorded by the sponsoring authority and placed before it on 14.04.2004 pointing out date of registration of single solitary offence.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Ms. Subhadra Patel for the petitioner, has taken this Court through the contentions raised in the petition. However, she has focussed his arguments mainly on three grounds. The first ground pressed into service by ld. counsel Ms. Patel is that the petitioner has been wrongly branded as "bootlegger" and his activities are dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act. The second ground pressed into service is that as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

"4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. The next ground pressed into service by ld. counsel Ms. Patel for the petitioner detenu is that there is a delay in passing the order of detention, and that too unexplained delay. The last and only case registered against the petitioner is on 01.04.2004 and thereafter, no case is registered against him and the order of detention is passed on 29.05.2004. Thus, there is a delay of about 1 month and 28 days. Even the petitioner was arrested in connection with the aforesaid offence on the same day i.e. 01.04.2004 and from the date of his arrest also, there is a delay of about 1 month and 28 days days in passing the order of detention. This delay ought to have been explained reasonably by the other side by furnishing details. It is pertinent to

note that though the statements of witnesses were recorded on 14.04.2004, they were placed before the detaining authority only on 25.05.2004. So more than about 1 month and 9 days were taken by the sponsoring authority in placing the papers before the detaining authority and for production of witnesses and verification before the detaining authority. Hence, this Court is satisfied with that there is no explanation much less reasonable explanation for not passing the order of detention in couple of hours or days after receipt of the papers from sponsoring machinery. Though affidavit-in-reply tendered today which is taken on record, is filed, there is no satisfactory explanation as to the delay caused. In view of delay on the part of both the authorities i.e. sponsoring authority and detaining authority, it has vitiated the legality and validity of the impugned order of detention as the explanation is not found satisfactory. Thus, the unexplained delay as stated above by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, this ground alone, coupled with other grounds pressed into service as aforesaid, the petition requires to be allowed.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 29.05.2004 passed by the Police Commissioner, Surat City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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